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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,348	09/26/2005	Eric F Bernstein	BERN0073US.NP	7761
26259 7590 06/25/2009 LICATA & TYRRELL P.C. 66 E. MAIN STREET MARLTON, NJ 08053				
EXAMINER HUANG, GIGI GEORGINA				
ART UNIT		PAPER NUMBER		
1612				
NOTIFICATION DATE		DELIVERY MODE		
06/25/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

poreilly@licataandtyrrell.com

### Office Action Summary

**Application No.**

10/541,348

**Applicant(s)**

BERNSTEIN, ERIC F

**Examiner**

GIGI HUANG

**Art Unit**

1612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Status of Application***

1. The response filed March 13, 2009 has been received, entered and carefully considered. The response affects the instant application accordingly:
  - a. Claim 1 has been amended.
  - b. Claim 2-10 has been cancelled.
2. Claim 1 is pending in the case.
3. Claim 1 is present for examination.
4. The text of those sections of title 35.U.S. Code not included in this action can be found in the prior Office action.
5. All grounds not addressed in the action are withdrawn or moot.
6. New grounds of rejection are set forth in the current office action.

***Claim Objections***

7. Claim 1 is objected to because of the following informalities: the claims uses the term "a" denoting the singular, followed by the plural "compounds" which is inconsistent. It appears Applicant meant "compound". Appropriate correction is required.

***Response to Arguments***

8. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Zigler et al. (WO 97/26879).

Claim 2 is cancelled, the rejection is moot.

Applicant's arguments filed 3/13/2009 have been fully considered but they are not persuasive. Applicant asserts that the reference does not teach the method of

treating glaucoma. This is not persuasive as it is not commensurate in scope with the claim as written. Zigler et al. teaches the use of hydroxylamine compound (nitroxides) such as include TEMPOL and TEMPOL-H for the treatment of cataracts. The claim currently is for a method for treating glaucoma comprising administering to a patient suffering from an ocular disease a nitroxide containing compound or polyhydroxy acid containing compound; whereby treatment of any ocular disease such as cataracts, with a polyhydroxy acid containing compound or nitroxide containing compound such as TEMPOL and TEMPOL-H, inherently treats anyone in that population for glaucoma.

Accordingly, the rejection is maintained.

9. Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Matier et al. (U.S. Pat. Pub. 2004/0002461).

Claim 2 is cancelled, the rejection is moot.

Applicant's arguments filed 3/13/2009 have been fully considered but they are not persuasive. Applicant asserts that the reference does not teach the method of treating glaucoma. This is not persuasive as it is not commensurate in scope with the claim as written. Matier et al. teaches the use of hydroxylamine compound (nitroxides) such as include TEMPOL and TEMPOL-H for the treatment of cataracts or macular degeneration. The claim currently is for a method for treating glaucoma comprising administering to a patient suffering from an ocular disease a nitroxide containing compound or polyhydroxy acid containing compound; whereby treatment of any ocular disease such as cataracts or macular degeneration, with a polyhydroxy acid containing

compound or nitroxide containing compound such as TEMPOL and TEMPOL-H, inherently treats anyone in that population for glaucoma.

Accordingly, the rejection is maintained.

### ***Conclusion***

10. Claim 1 is rejected.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GIGI HUANG whose telephone number is (571)272-9073. The examiner can normally be reached on Monday-Thursday 8:30AM-6:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fredrick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GH  
/Zohreh A Fay/  
Primary Examiner, Art Unit 1612